

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:05-cv-00329-TCK-SAJ
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

**OBJECTIONS AND RESPONSES OF STATE OF OKLAHOMA TO  
SEPARATE DEFENDANT COBB-VANTRESS INC.'S  
SECOND SET OF INTERROGATORIES  
PROPOUNDED TO PLAINTIFFS**

The Plaintiff State of Oklahoma respectfully submits its objections and responses to Separate Defendant Cobb-Vantress, Inc.'s Second Set of Interrogatories propounded to Plaintiffs. The State maintains records in numerous locations at many agencies and its record review is ongoing. The State shall supplement the following responses and attached privilege logs should additional responsive or privilege-protected documents come to its attention.

**GENERAL OBJECTIONS**

1. The State objects to these discovery requests to the extent that they seek the discovery of information that is protected by the attorney-client privilege and/or the work product doctrine.
2. The State objects to these discovery requests to the extent that they seek the discovery of information that is already in the possession of defendant, is obtainable from another source that is more convenient, less burdensome or less expensive, or is as accessible to defendant as it is to the State. As such, the burden of obtaining such sought-after information is substantially the same, or less, for defendant

interrogatory.

In further response to this Interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found within the business records being provided to this Defendant. Identification of such business records will occur on a rolling basis as the State's review of its business records proceeds.

The State reserves its right to supplement its answer to this interrogatory pursuant to Fed. R. Civ. P. 26(e).

**INTERROGATORY NO. 9:** Please identify by name and Chemical Abstracts Survey Registry Number ("CASRN") each hazardous substance You contend any Tyson Defendant has released or disposed of in the IRW for which You contend the [sic] any Tyson Defendant is liable under CERCLA, 42 U.S.C. § 9607 et seq.

**OBJECTIONS AND RESPONSE TO NO. 9:** The State objects to this interrogatory to the extent it seeks information protected by the attorney client privilege and / or the work product doctrine.

The State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). As of the date of this response, the State has not determined which experts retained by it or by its counsel will provide expert testimony in this case, and the Court has neither established the times and sequence of disclosure of such expert witnesses pursuant to Fed. R. Civ. P. 26(a)(2)(C), nor has the Court established a trial date to trigger the obligation of expert disclosure 90 days in advance of trial under that rule. The State will comply with the order of the Court establishing the time of expert disclosures as required by Fed. R. Civ. P. 26. Therefore, the State

also objects to this interrogatory to the extent it calls for information which constitutes expert opinions, the disclosure of which is premature.

The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by its counsel.

Pursuant to Fed. R. Civ. P. 26(b)(5) and LCvR 26.4, the State's claim of attorney-client privilege and work product protection is supported by its privilege log. Also, pursuant to LCvR 26.4(b), the attached privilege log does not contain any work product protection material or attorney-client privileged material created after the commencement of this action on June 13, 2005. The State reserves its work product protection claim and attorney-client privilege claim for all such materials, and reserves its right to supplement the attached privilege log should the Court enter any order requiring a log for protected or privileged materials created after the commencement of this action, or if the State identifies additional documents subject to a claim of privilege or protection.

The State further objects to this interrogatory on the ground that it is premature; the State's investigation of Tyson Defendant's conduct is on-going, and as such it is not possible to identify "each" hazardous substance that Tyson Defendant has released or disposed of in the IRW for which the State contends Tyson Defendant is liable. The State reserves all rights to supplement this interrogatory answer pursuant to Fed. R. Civ. P. 26(e). The State also objects to this interrogatory to the extent it calls for expert opinions, the disclosure of which is premature. The State also objects to this interrogatory insofar as it improperly attempts to narrow the scope of "hazardous substances" to only those chemicals specifically named on List 302.4. As explained in *City of Tulsa v. Tyson Foods, Inc.*, 258 F.Supp.2d 1263,

1283-85 (N.D. Okla. 2003), vacated pursuant to settlement, CERCLA is a remedial statute that courts construe liberally to effectuate its broad response and reimbursement goals. Consistent with these goals and the mandated liberal construction, the term "hazardous substances" means not only chemicals specifically named on List 302.4, but also chemical compounds, chemical forms and chemical combinations of those chemicals specifically named on List 302.4. *Id.*; see also *B.F. Goodrich Co. v. Murtha*, 958 F.2d 1192, 1201 (2d Cir. 1992) ("Liability under CERCLA depends only on the presence in any form of listed hazardous substances"). Subject to and without waiving its general or specific objections, the State contends that a Tyson Defendant has released or disposed of in the IRW:

Substance	CASRN
Aluminum compounds	-
Arsenic and compounds	-
Ammonia	7664417
Ammonium and compounds	-
Cadmium and compounds	-
Chromium and compounds	-
Copper and compounds	-
Lead and compounds	-
Manganese compounds	-
Nickel and compounds	-
Nitric acid	7786-81-4
Nitrogen oxides	-

Nitrosamines	-
Phosphorus and compounds	-
Phosphoric acid	7664382
Polynuclear Aromatic Hydrocarbons	-
Radionuclides	-
Selenium and compounds	-
Sodium compounds	-
Sulfuric acid	7664939
Thiourea	62566
Unlisted hazardous waste characteristic of reactivity	
Zinc and compounds	-
Iron compounds	-

The State reserves its right to supplement its answer to this interrogatory pursuant to Fed. R. Civ. P. 26(e).

**INTERROGATORY NO. 10:** Please Identify and describe each applicable or relevant and appropriate ("ARAR") you have met in complying with the National Contingency Plan.

**OBJECTIONS AND RESPONSE TO NO.10:** The State objects to this Interrogatory because Defendant has exceeded the limit of 25 interrogatories or discrete subparts found in Fed. R. Civ. P. 33(a). After conferring in good faith with counsel for Defendant, counsel for Defendant has, without agreeing with the State's count of interrogatories or discrete subparts, designated this interrogatory as one which, if not posed, would, by the State's count, reduce the total number of interrogatories and discrete subparts to

**CERTIFICATE OF SERVICE**

I hereby certify that on June 15, 2006, I electronically transmitted the foregoing document to the following ECF registrants or via United States Mail postage prepaid to the following:

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